

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RODNEY STEVEN MITUNIEWICZ,

Plaintiff,

v.

HAROLD CLARK *et. al.*,

Defendants,

Case No. C06-5383RBL

ORDER TO SHOW CAUSE

This Civil Rights/Americans With Disabilities Action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. This action was filed in July of 2006. (Dkt. # 1). The matter is now before the court on defendant's motion to dismiss (Dkt. # 52).

Mr. Mituniewicz alleges he has lost partial function of his left arm as a result of a police dog attack. He alleges the dog attacked his head and arm. He alleges he suffers from heart problems, obesity, diabetes, hypertension, and "diminished capacity" (Dkt. # 19 and 20). Mr. Mituniewicz alleges he was discriminated against and denied work release as a result of his disabilities (Dkt. # 19 and 20).

As the court examined the motion and considered the facts of this action it became apparent that Mr. Mituniewicz may be a member of the class, just certified in Perez v. Washington Department of Corrections, 06-CV-5625JKA.

1 Class certification occurred August 10, 2007, and the class has been defined as:

2 All disabled inmates of the Washington Department of Corrections who, since October 30,  
3 2003, have been partially or wholly denied participation in the Department of Corrections'  
4 work release program because of a disability and whose claim is limited to no more than 180  
5 days of lost wages.

6 (Peralez v Washington Department of Corrections, 06-CV-5625JKA, Dkt. # 33 (order granting certification  
7 and defining class)).

8 As a member of the class, plaintiff should receive notice of the class certification in Peralez pursuant to  
9 Fed. R. Civ. P. 23 (c)(2)(B). At that time plaintiff may elect to remain a class member in the class action or opt  
10 out and pursue his own claims.

11 The parties, both plaintiff and defendants, are directed to **SHOW CAUSE** why this action should not  
12 be **DISMISSED WITHOUT PREJUDICE** in light of a class being certified in Peralez v Washington  
13 Department of Corrections, 06-CV-5625JKA. The responses to this order are due on or before **September 21,**  
14 **2007.**

15 The clerk's office is directed to send a copy of this order to the parties in this case, **and to counsel**  
16 **representing the parties in Peralez**. The clerk should calendar the due date of **September 21, 2007**. The  
17 defendants motion to dismiss, (Dkt. # 52), is re-noted for October 5, 2007.

18 DATED this 22 day of August, 2007.

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20 /S/ J. Kelley Arnold  
21 J. Kelley Arnold  
22 United States Magistrate Judge  
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